CLERK'S COPY.

149

595900
Supr. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 67

J. I. CASE COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 21, 1943.

CERTIORARI GRANTED JUNE 21, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

J. I. CASE COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX.

	Original	Print
Proceedings before National Labor Relations Board	1	1
First amended charge	5	1
Amended complaint	7	2
Amended answer	11	6
Decision and order	15	9
Concurring opinion of Reilly, M.	35	27
Stipulation and agreed statement of facts	36	28
Exhibit "A"—Form of contract of employment	44	34
Exhibit "B"—Hand-book for employees	46	36
Exhibit "C"—Letter, dated December 17, 1941, from J. I. Case Company to all employees of Rock Island Works	56	46
Exhibit "D"—Letter, dated February 5, 1942, from J. I. Case Company to all employees of Rock Island Works	58a	48
Exhibit "E"—Letter, dated March 19, 1942, from J. I. Case Company to all employees of Rock Island Works	59	51
Proceedings in U. S. C. C. A., Seventh Circuit	62	53
Petition for enforcement of Board's order	62	53
Appearances (omitted in printing)	65	

Order allowing certiorari	66

	Original	Print
Order of submission .....(omitted in printing)..	66	
Opinion, Lindley, J.	67	57
Order .....(omitted in printing)..	73	
Respondent's objections to proposed form of decree (omitted in printing)	74	
Answer of petitioner to respondent's objections to petitioner's proposed decree (omitted in printing).....	77	
Decree	80	62
Petition to stay enforcement of decree (omitted in printing)	84	
Affidavit of Clark M. Robertson (omitted in printing)..	85	
Order staying proceedings.....(omitted in printing)..	87	
Clerk's certificate .....(omitted in printing)..	88	
Stipulation as to record	89	65

[fols. 1-5]

BEFORE THE NATIONAL LABOR RELATIONS BOARD, THIRTEENTH REGION

In the Matter of J. I. Case Company and International Union, United Automobile, Aircraft & Agriculture Implement Workers of America, C. I. O.

Case No. XIII-C-1818

Date Filed, March 27, 1942. Docketed C. M. C.

First Amended Charge—Filed April 16, 1942

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that J. I. Case Company at Rock Island, Illinois, employing 700 workers in manufacture and sale of agricultural implements and tractors, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (5) of said Act, in that

(a) The Company, by its officers and agents, did cause its employees individually to enter into employment contracts with respondent in order to defeat the right of its employees to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing; and that the contracts deprive its employees of the right to bargain collectively through representatives [fol. 6] of their own choosing and further deprive the employees of the right to engage in concerted activities for their mutual aid or protection;

(b) The Company, by its officers and agents, has since the date of certification of the above named union by the National Labor Relations Board and at all times thereafter, repeatedly refused to bargain collectively with the union as the exclusive bargaining representative of its employees.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also

the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., by H. D. Burcham, International Representative, 318 Robinson Building, Rock Island, Ill.

Duly sworn to by H. D. Burchman. Jurat omitted in printing.

[fol. 7] BEFORE THE NATIONAL LABOR RELATIONS BOARD

[Title omitted]

AMENDED COMPLAINT—Filed April 16, 1942

It having been charged by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organization, hereinafter called the union, that J. I. Case Co., a corporation, hereinafter called respondent, has engaged and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, hereinafter called the Board, by the Acting Regional Director for the Thirteenth Region, as agent for the Board, designated by Board Rules and Regulations, Series 2, as amended, for its Amended Complaint against respondent, hereby alleges the following:

1. Respondent is and has been at all times hereinafter related, a corporation organized under and existing by virtue of the laws of the State of Wisconsin, and operates and maintains several plants, including the plant involved in the instant case at Rock Island, Illinois.

2. Respondent is now and at all times hereinafter mentioned has been engaged at the Rock Island plant, hereinafter called the plant, in the manufacture and sale of farm implements and farm machinery.

[fol. 8] 3. Respondent in the due course and conduct of its business and in the operation of the plant, at all times herein material, did cause and has continuously caused, large

quantities of raw materials and supplies to be purchased and transported in interstate commerce from points outside the State of Illinois to the plant in the State of Illinois, and did cause and has continuously caused large quantities of farm implements and machinery manufactured at the plant in the State of Illinois to be sold and transported in interstate commerce from the plant to points outside the State of Illinois.

Respondent during the year 1940, in the operation of the plant, did purchase raw materials and supplies valued at approximately $1,000,000. Of this amount, approximately 80 per cent was purchased at points outside the State of Illinois and caused to be transported in interstate commerce from and through States of the United States other than the State of Illinois to the plant in the State of Illinois. Respondent during the year 1940 sold finished products manufactured at the plant in an amount in excess of $2,000,000, of which amount approximately 80 per cent was shipped in interstate commerce from the plant in the State of Illinois to, into and through States of the United States other than the State of Illinois.

4. The union is a labor organization as defined in Section 2, subdivision (5) of the Act.

5. Respondent, by its officers, agents and employees, while engaged in the operation of the plant from on or about 1937 and at various times thereafter, did offer to each and every one of its employees and did execute with each of approximately 75 per cent of its employees, individually, employment contracts, a representative copy of which is hereto attached as exhibit "A" and made a part hereof, in order to: abrogate, negate and circumvent the right of its employees to form, join, or assist labor organizations; to deprive its employees of the right to bargain collectively through representatives of their own choosing; interfere with, restrain, and coerce its employees in the exercise of their right to negotiate with respondent [fol. 9] with respect to wages, hours and other conditions of employment; and to obstruct, prevent and defeat any concerted activities among its employees for the purpose of collective bargaining or other mutual aid or protection, and for these reasons, and each of them, said individual contracts are unenforceable and void as to respondent.

6. In order to insure to the employees the full benefit of their right to self-organization and otherwise to effectuate the policies of the Act, all production and maintenance employees of respondent employed at the Rock Island plant, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank DeFreeze and Hank De Vooght, excluding office and clerical employees, and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act, hereinafter called the unit.

7. On or before February 13, 1942, a majority of the employees in the aforesaid unit, designated the union as its representative for the purpose of collective bargaining with respondent, such designation having been made, pursuant to a Direction of Election issued by the Board on January 26, 1942, in an election by secret ballot held on February 13, 1942, and at all times since February 13, 1942 the union has been the exclusive representative of all employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

8. On or about March 7, 1942, and at all times thereafter, while respondent was engaged in the operation of the Rock Island plant as described above in paragraph 3, the union requested respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other conditions of employment with the union as the exclusive representative of all the employees of respondent in the unit. On March 7, 1942, and at all times thereafter, respondent did fail and refuse and has continuously failed and refused to bargain collectively with the union in that [fol. 10] it did fail and refuse and has continuously failed and refused to recognize or negotiate with the union as the exclusive representative of all the employees in the unit in respect to rates of pay, wages, hours of employment, or other conditions of employment.

9. Respondent, by the acts set forth in paragraph 8 hereof, did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (5) of the Act.

10. By the acts described above in paragraphs 5 and 8 hereof, and by each of said acts, and by entering into, maintaining and enforcing the contracts referred to in paragraph 5 hereof, and by stating to its employees that said contracts were a bar to the selection of a collective bargaining representative and that respondent would not bargain with the union as the exclusive representative of all the employees in the unit in respect to rates of pay, wages, hours of employment, or other conditions of employment during the term of said contracts respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act; and by all of said acts and by each of them, respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the Act.

11. The acts of respondent as set forth in paragraphs 5, 8, and 10 hereof, occurring in connection with the operations of respondent described in paragraphs 2 and 3 hereof, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

12. The aforesaid acts of respondent set forth in paragraphs 5, 8, and 10 hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5) and Section 2, subdivisions (6) and (7) of the Act.

Wherefore, the Board on this 9th day of April, 1942 [fol. 11] issues its Amended Complaint against J. I. Case Company, respondent herein.

Walter E. Taag, Acting Regional Director, 13th Region, National Labor Relations Board.

Copy received this 13th day of April, 1942.

J. I. Case Co., by C. M. Robertson, Counsel.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

[Title omitted]

AMENDED ANSWER—Filed April 16, 1942

Now comes the respondent, J. I. Case Company, and by way of answer to the amended complaint herein alleges:

1. Admits the allegations of Paragraphs 1, 2, 3 and 4.

2. By way of answer to Paragraph 5 of said complaint, respondent admits that by its duly authorized agents and while engaged in the operation of the plant in the year 1937 and each factory year thereafter it offered to each of its employees, and did execute with each of approximately seventy-five per cent of its employees individually, em- [fol. 12] ployment contracts for the current factory year, and that Exhibit "A" to said complaint is a representative copy of said contract. Respondent denies that the offering and execution of said contracts was in order to abrogate, negate, and circumvent the right of said employees to form, join, or assist labor organizations, or to deprive its employees of the right to bargain collectively through representatives of their own choosing, or in any manner to interfere with, restrain and coerce its employees in the exercise of their right to negotiate with respondent with respect to wages, hours and other conditions of employment, or to obstruct, prevent and defeat any concerted activities among its employees for the purpose of collective bargaining or other mutual aid or protection, and respondent denies that said individual contracts are unenforceable and void as to respondent. Respondent also alleges that individual contracts between employer and employee are lawful and that the individual contracts so entered into by respondent and its employees were voluntarily entered into in good faith and the same are in all respects valid and enforceable both as to respondent and the employees, parties thereto.

3. By way of answer to paragraphs 6 and 7, respondent admits that on March 3, 1942, the National Labor Relations Board issued its certification in a representation proceeding as follows:

"It Is Hereby Certified, That International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of In-

dustrial Organizations, has been selected by a majority of all the production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank DeFreeze, and Hank DeVooght, of J. I. Case Co., Rock Island, Illinois, plant exclusive of office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section (a) of the National Labor Relations Act, Inter-[fol. 13] national Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

Respondent further alleges that said bargaining unit as of February 13, 1942, the date of the election in the representation proceeding, was comprised of 582 employees, of which number 415 employees had individual employment contracts with the respondent, and that in the representation proceedings respondent introduced into the record the number of individual employment contracts and the term thereof. Respondent further alleges that on the election in said representation proceeding 352 employees voted in favor of said Union as their representative for collective bargaining and 190 employees signified their desire not to be represented by said Union for the purpose of collective bargaining, thus certain employees unknown to respondent have consistently evidenced their desire to maintain their individual contractual status with respondent as the same existed prior to the said representation proceeding.

4. By way of answer to Paragraph 8 of the complaint, respondent denies that while engaged in the operation of the Rock Island plant on or about March 7, 1942, or at any time thereafter, it refused to deal with the Union pursuant to the certification of the National Labor Relations Board above set forth, and alleges the fact to be that respondent agreed to deal with the Union as such representative except that respondent could not deal with said Union as to employees having individual contracts with respondent

covering the terms and conditions of their employment so long as said contracts are in effect, and that respondent has offered to deal with said Union on behalf of all employees on conditions of employment which do not affect its rights and obligations and the rights and obligations of its employees under the individual contracts, and has also offered to deal with said Union on all general matters pertaining to rates of pay, wages, hours of employment and other conditions of employment as to employees not having individual contracts with respondent. Respondent further [fol. 14] alleges that said Union refused to negotiate or deal on the basis above set forth.

5. By way of answer to Paragraph 9 of the complaint, respondent denies that it did engage in and is engaged in unfair labor practices within the meaning of Section 8, subdivision (5) of the Act.

6. By way of answer to Paragraph 10 of the complaint, respondent repeats and realleges its answer to Paragraphs 5 and 8 of the complaint, and denies that by entering into, maintaining and enforcing individual contracts with its employees, and also denies that by any statement made by it, respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act; or that respondent by any act did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the Act.

7. By way of answer to paragraph 11 of the complaint, respondent repeats and realleges its denial of and answer to Paragraphs 5, 8 and 10 of the complaint, and denies that any act of respondent having a close, intimate and substantial relation to trade, traffic and commerce among the several states tended to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

8. By way of answer to Paragraph 12 of said complaint, respondent realleges and restates its answer to Paragraphs 5, 8 and 10 of the complaint, and denies that any act of respondent constitutes an unfair labor practice affecting commerce within the meaning of Section 8, subdivisions (1) and (5) and Section 2, subdivisions (6) and (7) of the Act.

Wherefore respondent demands that the amended complaint be dismissed.

Dated this 9th day of April, 1942.

J. I. Case Company, By L. E. Stahl, *Works Manager, Rock Island Works of J. I. Case Company, Respondent.* P. O. Address: 200 Seventh Street, Rock Island, Illinois.

* * * * * * *

[fol. 15] Clark M. Robertson, 640 Wells Building, 324 E. Wisconsin Ave., Milwaukee, Wisconsin. Ben T. Reidy, 311 Safety Building, Rock Island, Illinois, *Respondent's Attorneys.*

Duly sworn to by L. E. Stahl. Jurat omitted in printing.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. C-2180

In the Matter of J. I. Case Company and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O.

Mr. Isaiah S. Dorfman and *Mr. William J. Isaacson*, for the Board.

Mr. Clark M. Robertson, of Milwaukee, Wis., and *Mr. Ben T. Reidy*, of Rock Island, Ill., for the respondent.

Mr. H. D. Burcham, of Rock Island, Ill., for the Union.

Mr. Marvin C. Wahl, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon an amended charge duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., herein called the Union, [fol. 16] the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint and amended complaint on March 27 and April 13, 1942, respectively, against J. I. Case Company, herein called the respondent, alleging that the respondent had engaged in

and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, and of the amended complaint were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the amended complaint alleged in substance that the respondent, at its Rock Island, Illinois, plant (1) since March 7, 1942, has refused to bargain collectively with the Union for the employees in an appropriate unit, although the Union at all times since February 13, 1942, has been the exclusive representative of such employees; (2) since 1937, has offered each of its employees, and has executed with approximately 75 percent of its employees individually, employment contracts, which are unenforceable and void as to the respondent because they were tendered for the purpose of depriving its employees of their right to self-organization and collective bargaining through representatives of their own choosing; and (3) by the foregoing acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On April 13, 1942, the respondent filed its answer to the amended complaint, admitting certain allegations respecting its business, but denying that it had engaged in unfair labor practices. On the same day, the respondent, the Union, and the Board entered into a stipulation agreeing upon a statement of facts to serve as the basis for our Decision and Order herein and expressly waiving further hearing, the issuance of an Intermediate Report or Proposed Findings of Fact, or other procedure before the Board. The stipulation provides as follows:

For the purpose of rendering unnecessary the taking of testimony in the above entitled matter,

It Is Hereby Stipulated and Agreed by and between J. I. [fol. 17] Case Company, hereinafter called respondent; International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, hereinafter called the Union; and Isaiah S. Dorfman, Regional Attorney, and William J. Isaacson, Attorney, for the Thirteenth Region of the National Labor Relations Board, that the following

statement of facts and exhibits attached hereto shall have the same force and effect as though witnesses had testified with respect thereto and said exhibits had been offered and received in formal hearing.

I

Upon charges and amended charges duly filed by the Union, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Thirteenth Region, issued its complaint, dated March 27, 1942, and its amended complaint, dated April 9, 1942, against respondent, alleging that respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. The complaint accompanied by notice of hearing, and the amended complaint were duly served upon respondent and the Union.

Respondent's answer dated April 6, 1942, and respondent's amended answer dated April 9, 1942, while admitting various of the allegations contained in the complaint denied that it had engaged or was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act. The answer and amended answer were duly served upon the Board and Union.

II

The parties hereto expressly waive further hearing, intermediate report, proposed findings of fact, and other and further procedure before and of the Board, provided that [fol. 18] the parties hereto may within ten (10) days after the execution of the Stipulation file briefs with the Board and ask leave of the Board to argue orally. This Stipulation and Agreed Statement of Facts, together with first amended charge, complaint and notice of hearing, amended complaint, answer, amended answer, and the transcript of the record and exhibits in *J. I. Case Co.* and *International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O.*, Case No. R-3394, as well as the Board's Decision and Direction of Election and Certification of Representatives therein, shall be filed with the Chief Trial Examiner in Washington, D. C., and shall constitute the entire record in this proceeding. Upon said

record the Board may make findings of fact, conclusions of law and issue a decision and order. In any proceedings instituted to enforce or review such Board order the record as herein described shall constitute the entire record.

III

Respondent, a Wisconsin corporation, having its principal place of business in Racine, Wisconsin, and operating several plants in Wisconsin, Iowa, and Illinois, is engaged in the manufacture and sale of farm implements and farm machinery. Respondent's plant at Rock Island, Illinois, hereinafter called the plant, is the only plant involved in the instant proceeding and was acquired and placed in operation during 1937. During the year 1941 respondent purchased raw materials and supplies valued at approximately $1,000,000, of which amount approximately 80 per cent was delivered from points outside the State of Illinois. During the same period, respondent sold finished products manufactured at the plant in an amount in excess of $2,000,000, of which amount approximately 80 per cent was shipped to points outside the State of Illinois. There are at the present time approximately 700 persons employed at the plant, 582 of whom are in the appropriate unit herein- [fol. 19] after referred to in Paragraph VI. Respondent admits that its operations as herein described occurred in commerce within the meaning of Section 2 (6) and (7) of the Act.

IV

The Union, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

V

Respondent, by its duly authorized agents, while engaged in the operation of the plant from on or about November, 1937, and at various times thereafter, upon hiring employees or at the commencement of the factory year, offered to each and every one of its employees individually a contract, a representative copy of which is hereto attached as Exhibit "A"[1] and made a part hereof (respondent's

[1] The Exhibits which are referred to in the Stipulation are not set forth in full herein, but are referred to in our findings of fact, *infra*, wherever necessary or material.

current rules referred to therein and made a part thereof, is attached hereto and made a part hereof as Exhibit "B"), and executed said contracts with each of approximately 75 per centum of its employees individually. From time to time thereafter at the beginning of each factory year, certain of said contracts were renewed and certain new contracts entered into. The employees executing said contracts were not necessarily the same from time to time; certain employees executed said contracts who had not executed them during the preceding factory year and other employees who had previously executed contracts failed to renew them. The percentage of contracts in effect at all times remained approximately as herein set forth. The factory years runs currently from August 1, 1941 up to and including July 31, 1942. There are presently in full force and [fol. 20] effect 433 of such contracts between respondent and individual employees, 415 of which are with employees in the unit as described in Paragraph VI herein, which unit consists of 582 employees.

On December 17, 1941, February 5, 1942, and March 19, 1942, and on each of said dates, respondent mailed to each and all of its employees engaged at the plant a letter over the signature of T. E. Stahl, Works Manager, a copy of each of said letters being attached hereto, and made a part hereof, as Exhibits "C", "D", and "E", respectively.[2]

The Board contends, and respondent denies, that said individual contracts now in effect, and each of them, are

---

[2] The letter of December 17 summarized the evidence and arguments which were presented at the hearing in the representation proceeding, including the respondent's contention that the individual contracts constituted a bar to the proceeding. In the letter of February 5, the respondent advised its employees that the Board had directed the holding of an election and that conferences had been held in preparation therefor and urged all eligible employees to vote. The letter of March 19 stated that the Union had won the election and had been certified by the Board, that the Union had presented the respondent with a collective bargaining agreement but the respondent refused to deal with the Union concerning the terms and conditions of employment covered by the individual contracts, and that the Union had filed charges with the Board.

illegal, unenforceable and void as to respondent, as set forth in Paragraphs 5 and 10 of the complaint in that:

(1) Each of said individual contracts, and particularly the employee covenants provided therein, preclude the employees, and each of them, from exercising their rights under the Act. Each of said contracts is, therefore, invalid on its face and unenforceable and void as to respondent;

(2) In addition to (1) herein and regardless whether said contracts are illegal *per se*, respondent actively utilized said contracts as a means of interfering with the self-organization of its employees and preventing collective bargaining by publicizing to its employees:

(a) That the contracts were a bar to the selection of a bargaining representatives under Section 9 (c) of the Act as set forth in Exhibit "C";

[fol. 21] (b) That the company would not bargain with their duly certified collective bargaining representative as exclusive representative, respecting wages, hours and working conditions during the term of said individual contracts as set forth in Exhibit "E".

For the purposes of this Stipulation, the Board does not contend that the execution of said contracts was a condition of employment, or that the status of individual employees was effected by reason of signing or failing to sign said contracts.

VI

The parties state that on January 26, 1942, the Board, rejecting respondent's contention therein raised that the contracts hereinabove referred to constitute a bar to a direction of election, issued its Decision and Direction of Election in Case No. R-3394, entitled *In the Matter of J. I. Case Co.* and *International Union, United Automobile, Aircraft and Implement Workers of America, C. I. O.* (38 N. L. R. B. 110), finding, among other things, that in order to insure to the employees of the plant the full benefit of their right to self organization and otherwise to effectuate the policies of the Act, "all production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, of J. I. Case Co., Rock Island, Illinois, plant exclusive of office and clerical employees and Paul

Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices" constitute a unit appropriate for the purposes of collective bargaining with respondent, within the meaning of Section 9 (b) of the Act, hereinafter called the unit. For the purposes of this Stipulation respondent does not contest the appropriateness of the unit.

[fol. 22]

VII

That on February 13, 1942, a majority of the employees in the unit designated the Union as its representative for the purpose of collective bargaining with respondent, such designation having been made pursuant to aforesaid Direction of Election in an election by secret ballot held on February 13, 1942, and at all times since February 13, 1942, the Union has been the exclusive representative of all employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

VIII

On March 7, 1942, Mr. H. D. Burcham, duly authorized representative of the Union, in a meeting with Mr. T. E. Stahl, Works Manager of the Rock Island plant and duly authorized representative of respondent, did request respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other conditions of employment with the Union as the exclusive representative of all the employees of respondent in the unit. In response thereto, Mr. Stahl did fail and refuse to negotiate with the Union as the exclusive representative of all the employees in the unit with respect to rates of pay, wages, hours of employment or other conditions of employment, declaring that respondent could not deal with the Union in any manner affecting the rights and obligations of respondent and its employees under the individual contracts while the contracts remained in full force and effect. Mr. Stahl continued that respondent would deal with the Union on matters which did not affect the rights of respondent and the employees under the individual contracts, and that it would deal with the Union as the exclusive bargaining agency for all employees in the unit on matters relating to hours, wages and conditions of employment upon expiration of the individual contracts.

[fol. 23] IX

At all times since March 7, 1942, up and including the making of this Stipulation and Agreed Statement of Facts, respondent has maintained the same position, as described in Paragraph VIII herein, with respect to the Union's request to bargain collectively.

The Board contends, and respondent denies, that respondent has refused to bargain collectively with the Union as the exclusive representative of its employees within the unit in violation of Section 8 (5) of the Act.

X

Anything to the contrary herein notwithstanding, the record in this matter may be reopened by the Board upon notice to the parties, provided should that occur, that the record will, upon request of any of the parties hereto, be reopened with respect to any or all issues herein.

XI

There is no oral understanding or agreement which varies, alters, or adds to this Stipulation and Agreed Statement of Facts.

On April 28, 1942, the respondent filed a brief which the Board has considered.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

The respondent, J. I. Case Company, is a Wisconsin corporation engaged in the manufacture and sale of farm implements and farm machinery. It operates plants in the States of Wisconsin, Iowa, and Illinois. The respondent's plant at Rock Island, Illinois, is involved in this proceeding. During 1941 the respondent, in connection with its [fol. 24] operations at Rock Island, purchased raw materials and supplies valued at approximately $1,000,000, of which amount 80 percent represented deliveries to Rock Island from points outside the State of Illinois. In the same period, the respondent sold finished products which were manufactured at its Rock Island plant in an amount exceed-

ing $2,000,000, of which 80 percent represented shipments to points outside the State of Illinois. At the time of the hearing, the respondent employed approximately 700 persons at its Rock Island plant. The respondent admits that it is engaged in commerce within the meaning of the Act.

II. The Organization Involved

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

III. The Unfair Labor Practices

A. The Refusal to Bargain Collectively

1. The Appropriate Unit

The parties stipulated, and we find, that all production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, constitute a unit appropriate for the purposes of collective bargaining and that such unit insures to employees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act.[3]

[fol. 26] 2. Representation by the Union of a Majority in the Appropriate Unit

On February 13, 1942, in an election conducted by the Board pursuant to a Direction of Election,[4] a majority of

---

[3] We previously found this unit to be appropriate in *Matter of J. I. Case Co.* and *International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (C. I. O.)* 38 N. L. R. B. 522.

[4] *Idem.*

the employees in the appropriate unit designated the Union as their representative for the purposes of collective bargaining with the respondent with respect to rates of pay, wages, hours of employment, and other conditions of employment. On March 3, 1942, the Board certified the Union as such representative.[5] The parties stipulated, and we find, that at all times since February 13, 1942, the Union has been the exclusive representative of all the employees in the unit heretofore found appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. There are 582 employees in the appropriate unit.

3. The Refusal to Bargain

In accordance with the stipulation of the parties, we find that on March 7, 1942, H. D. Burcham, a representative of the Union, requested T. E. Stahl, works manager of the Rock Island plant, to bargain collectively with the Union as exclusive representative of the respondent's employees in the appropriate unit. Stahl, however, refused to negotiate with the Union as such representative, stating that the respondent "could not deal with the Union in any manner affecting the rights and obligations of respondent and its employees under the individual contracts while the contracts remained in full force and effect." Stahl asserted that the respondent would deal with the Union on matters which did not affect the rights of the respondent and the employees under the individual contracts and that it would deal with the Union as the exclusive bargaining representative for all employees in the unit on matters relating to [fol. 26] hours, wages, and conditions of employment upon the expiration of the individual contracts.

4. The Individual Employment Contracts

In November 1937, and at various times thereafter, the respondent, upon hiring new employees and at the commencement of each factory year, offered to each employee an individual contract. The contracts in effect at the time

---

[5] *Matter of J. I. Case Co.* and *International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (C. I. O.)*, 39 N. L. R. B., No. 73.

of the alleged refusal to bargain were executed on August 1, 1941, or thereafter, for a period ending July 31, 1942. They, like their predecessors, contained the following provisions: The respondent agreed to pay a specified hourly rate or prevailing piece rates to the contracting employee and to maintain such rates for the term of the agreement, to determine new rates in the event that the contracting employee's job changed, to furnish employment as steadily as trade conditions permitted, and to comply with the respondent's rules;[6] the employee agreed to accept the wages, hours and working conditions provided for, to "faithfully and honestly" serve the respondent during the term of the agreement, to preserve the respondent's property, to comply with its rules, and to accept the respondent's "fixed" policy that "quality must be first," and that "defective work will not be paid for."

The respondent executed such contracts with approximately 75 percent of its employees. At the beginning of each factory year, some existing contracts were renewed, others were entered into for the first time, while some employees failed to renew contracts executed by them during the preceding factory year. As of April 13, 1942, 415 of the 582 employees in the appropriate unit had signed individual contracts.

As stated in the stipulation, it is not contended that the execution of the individual contracts was a condition of employment or that the status of individual employees was affected by reason of signing or failing to sign the contracts.

[fol. 27] In accordance with the stipulation of the parties, we find that on December 17, 1941, the day on which the hearing was held in the representation proceeding, and again on March 19, 1942, following its refusal to bargain with the Union concerning matters covered by the individual contracts, the respondent wrote its employees concerning its position with respect to such contracts. Thus, in its letter of December 17, it wrote:

* * * * * * *

[6] The rules referred to included the factory rules, safety rules, apprentice training, a vacation plan, and miscellaneous information.

The Company * * * showed to the Board that on the payroll of November 22, 1941, 433 of the employees had exercised their right to make individual contracts with the Company. * * *

Evidence was presented on this point and will be submitted to the Labor Board at Washington for a final determination as will also the Company's request that the proceeding be dismissed on the ground that the Company does not believe that any action should affect its right and the rights of its employees who have signed individual contracts and indicated that they wish to bargain with the Company on that basis.

* * * * * * *

The Company is giving you this information in accordance with its policy of keeping you informed as to matters which affect the employment relationship existing between you and the Company.

Material excerpts from the March 19 letter follow:

As we told you in our letter of December 17, 433 Case employees have exercised their right to make individual contracts with the Company. These contracts continue until August 1, 1942, and their validity is not affected by the result of the ballot. Accordingly, when the Committee of the Union came to see the Management of the Rock Island Plant, and presented a collective bargaining contract for all employees, they were advised that the Company could not deal with the Union in any manner which affected the rights and obligations of the Company and its employees under the individual contracts while these contracts were still in effect.

* * * * * * *

[fol. 28] The Union has advised the Company that it will not deal with the Company except on the basis of the contract which it presented. In other words, the Union has taken the position that the Company must tear up its contracts with its individual employees and disregard the rights and obligations of its employees and of itself under those agreements. The Company believes and has been advised that the contracts for their term constitute legal and binding obligations both on the part of the Company and on the part

of the employees, and that its individual employees have constitutional rights which they are entitled to have preserved and which the Company has no right to surrender.

* * * * * * *

5. Conclusions

The respondent contends that the individual contracts are valid and enforceable and preclude it from engaging in collective bargaining with the Union concerning the terms and conditions of employment which are covered by such contracts.[7]

The issue thus presented is whether, by voluntarily entering into individual contracts of employment prior to the designation of a collective bargaining agent, the employees are disabled during the term of such contracts from bargaining through representatives of their subsequent choosing with respect to terms and conditions of employment covered by the individual compacts. Correlatively, the question is whether the respondent, under the circumstances, is relieved of the duty to bargain collectively.

We must resolve the issue against the respondent, and we find its defense to be without merit. The Act expressly recognizes that the refusal of employers to accept the procedure of collective bargaining leads to industrial strife and unrest by perpetuating the inequality of bargaining power between employers and their employees "who do not [fol. 29] possess full freedom of association or actual liberty of contract." Aimed at removing that disparity of bargaining power and its consequent evils, the Act expressly declares that the public policy is to encourage the practice and procedure of collective bargaining and imposes upon employers the duty to bargain exclusively with the duly designated representatives of their employees. The duty is necessarily paramount to the freedom of contract which the employer may have enjoyed prior to the enactment of the statute or before the collective agent has been

---

[7] In our Decision and Direction of Election (see footnote 3, *supra*) we overruled a similar contention of the respondent to the effect that the individual contracts with the employees constituted a bar to an election.

chosen. Until such representative is designated, the employer may, of course, deal individually with his employees concerning any aspect of the employment relationship so long as he does not exact terms repugnant to the Act [8] and does not offer the contracts for the purpose of infringing rights under the Act.[9] The employee is not, however, presumed thereby to have surrendered his right to collective bargaining during the period of his individual agreement. The right and its correlative duty are merely in abeyance pending the choice of a collective agent.[10] When once a majority of the employees have exercised their right to choose a representative for concerted bargaining in an appropriate unit, the employer's statutory obligation to deal exclusively with such representative as to all terms and conditions of employment is immediate and unconditional and its performance may not be deferred or qualified by reason of any individual bargain which he may have made with his employees.[11] Nor may the employer, contrary to the Board's determination, limit the bargaining unit to the non-contracting employees and thereby arrogate to himself a [fol. 30] power lodged exclusively in the Board. Any attempt by the employer to curtail the collective agent's power or to compel individual bargaining under the contracts constitutes an obstruction to the rights guaranteed by the Act. To hold otherwise, would be to violate the clear intendment of the Act and to discourage self-organization and collective bargaining.

---

[8] *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350.

[9] *National Labor Relations Board* v. *Superior Tanning Co.*, 117 F. (2d) 881 (C. C. A. 7), cert. den., 313 U. S. 559.

[10] Even where an employee voluntarily signs an individual contract of employment, agreeing to bargain individually, the individual contract, to that extent, is void and unenforceable. See *National Labor Relations Board* v. *Stone*, 125 F. (2d) 752 (C. C. A. 7); *Matter of Killefer Manufacturing Corporation* and *Steel Workers Organizing Committee*, 22 N. L. R. B. 84.

[11] In *Home Building & Loan Assn.* v. *Blaisdell*, 290 U. S. 398, 435, the Court said, "* * * existing laws [are] read into contracts in order to fix obligations as between the parties * * *."

Thus, the respondent, by insisting that those who signed contracts wish to bargain on an individual basis and by refusing to deal with the Union with respect to terms and conditions covered by the individual contracts, has failed to bargain collectively within the meaning of the Act.

Moreover, the respondent has utilized the contracts to interfere with and impede its employees in the exercise of their right to select representatives for collective bargaining and to bargain through such representatives by urging its employees, by means of the letters of December 17, 1941, and March 19, 1942, to bargain individually on the basis of the contracts rather than through a collective agent. The letters clearly were intended to advise the employees that continued support of the Union as collective bargaining agent would be of no avail, as the respondent would refuse to deal with such agent. The respondent's purpose in so circularizing its employees was thus to compel them to adhere to the individual contracts and to abandon their collective efforts and rights during the term of the contracts.

We find that the respondent on March 7, 1942, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We find also that, by urging its employees to bargain individually on the basis of the contracts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

[fol. 31] IV. The Effect of the Unfair Labor Practices upon Commerce

We find that the activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of the

rights guaranteed in Section 7 of the Act. We shall, therefore, order the respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondent has failed to bargain with the Union. Consequently, we shall order it upon request to bargain collectively with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since we have found that the respondent has utilized the individual contracts as a means of thwarting the rights of its employees under the Act, and since we consider such contracts to constitute an obstacle to the full exercise of the right to collective bargaining, we find it necessary, in order to effectuate the policies of the Act, to order the respondent to refrain from enforcing the contracts. We shall consequently direct the respondent to give to each employee who has signed such contract written notice stating: (1) that the contracts will not in any manner be enforced or attempted to be enforced; (2) that the employees are not required or expected by virtue of such contracts to deal with the respondent individually; and (3) that such discontinuance of the contracts is without prejudice to the assertion of any legal rights the employees may have ac- [fol. 32] quired under such contracts. We shall further order the respondent to post notices to the same effect in appropriate places in its Rock Island plant.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, constitute a unit appropriate for the

purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Since February 13, 1942, and at all times thereafter, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., has been the exclusive representative of all such employees for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., as the exclusive representative of its employees within an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor [fol. 33] practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, J. I. Case Company, Rock Island, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to the individual contracts of employment or any modification, continuation, extension, or renewal thereof, or entering into any similar form of contract with its employees for any period subsequent to the date of this Decision;

(b) Refusing to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., as exclusive representative of all production and maintenance employees at its

Rock Island, Illinois, plant, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(c) In any manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Give separate written notice to each of its employees [fol. 34] who signed an individual contract of employment or any modification, continuation, extension, or renewal thereof, or any similar form of contract for any period subsequent to the date of this Decision, that such contract will not in any manner be enforced or attempted to be enforced, that the employee is not required or expected by virtue of such contract to deal with the respondent individually, and that such discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under such contract;

(b) Upon request, bargain collectively, with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., as the exclusive representative of all its production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(c) Post immediately in conspicuous places throughout its Rock Island, Illinois, plant and maintain for a period of

at least sixty (60) consecutive days from the date of posting, notices stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) hereof, and (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) hereof;

(d) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this — day of July 1942.
Henry A. Millis, Chairman; Wm. M. Leiserson, Member, National Labor Relations Board. (Seal.)

[fol. 35] Mr. Gerard D. Reilly concurring:

I concur in finding that the refusal of the respondent to bargain with the Union certified pursuant to Section 9 (c) as the collective bargaining agent for all the employees within the appropriate unit on matters covered by the individual contracts amounted to a violation of Section 8 (5) of the Act.

The position of the Company is that since these individual contracts have fixed certain provisions with respect to wages, hours, and working conditions of employment for a term of 1 year, the employees are disabled during the term of these contracts from bargaining through a collective agent for changes in these matters. In other words, we are urged to hold that inasmuch as the individual agreements contained no provisions which contravened the provisions of this Act of any other statute, the employees in question were bound by these conditions until the expiration date and were not relieved from their obligations by the designation of a statutory collective bargaining agent.

The question thus posed is a difficult one. It raises a problem of a possible conflict between the law of contracts and rights arising under the National Labor Relations Act. In my opinion, this record does not require the Board to pass upon it.

The case is before us on a stipulation of agreed facts. These individual contracts were incorporated by reference

in the stipulation and the Board should consider their legal effect. It seems to me clear from examining these instruments that, despite the fact that on their face they purport to be in effect for a fixed period, they are lacking in the elements of mutuality necessary for contracts of employment enforceable for a definite term.[12] These contracts afford the employees no greater security of tenure than they would enjoy under an employment relationship terminable [fol. 36] at will. Hence, it follows that an employee himself at any time, could negotiate for a change in wages, hours, and working conditions specified in these instruments. Therefore, under the provisions of the National Labor Relations Act, an employee could designate a collective bargaining agent to conduct these negotiations and the employer would be obligated to bargain with him. That is what happended in this case, but the employer did not fulfill his obligation.

I think it is sufficient to rest our judgment upon this ground without passing upon the abstract question of law raised by the respondent.

Signed at Washington, D. C., this — day of July 1942.

Gerard D. Reilly, Member, National Labor Relations Board.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

[Title omitted]

STIPULATION AND AGREED STATEMENT OF FACTS

For the purpose of rendering unnecessary the taking of testimony in the above entitled matter,

It Is Hereby Stipulated and Agreed by and between J. I. Case and Company, hereinafter called respondent; Inter-

---

[12] Thus, while exacting a promise from the employee to work for a period of 1 year, the employer agrees only to furnish employment "as steadily as business and trade conditions permit." (Clause 2 of the Company agreement.) Moreover, the employer reserves the right unilaterally to effect material changes in manufacturing methods and to determine the rate of pay for any "new job" which might result in consequence of such changes. (Clause 3 of the Company agreement.)

national Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the [fol. 37] Congress of Industrial Organizations, hereinafter called the Union; and Isaiah S. Dorfman, Regional Attorney, and William J. Isaacson, Attorney, for the Thirteenth Region of the National Labor Relations Board, that the following statement of facts and exhibits attached hereto shall have the same force and effect as though witnesses had testified with respect thereto and said exhibits had been offered and received in formal hearing.

I

Upon charges and amended charges duly filed by the Union, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Thirteenth Region, issued its complaint, dated March 27, 1942, and its amended complaint, dated April 9, 1942, against respondent, alleging that respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. The complaint accompanied by notice of hearing, and the amended complaint were duly served upon respondent and the Union.

Respondent's answer dated April 6, 1942, and respondent's amended answer dated April 9, 1942, while admitting various of the allegations contained in the complaint denied that it had engaged or was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act. The answer and amended answer were duly served upon the Board and Union.

II

The parties hereto expressly waive further hearing, intermediate report, proposed findings of fact, and other and further procedure before and of the Board, provided that the parties hereto may within ten (10) days after the execution of this Stipulation file briefs with the Board and ask leave of the Board to argue orally. This Stipulation and Agreed Statement of Facts, together with first [fol. 38] amended charge, complaint and notice of hearing, amended complaint, answer, amended answer, and the transcript of the record and exhibits in *J. I. Case Co.* and *Interna-*

tional Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., Case No. R-3394, as well as the Board's Decision and Direction of Election and Certification of Representatives therein, shall be filed with the Chief Trial Examiner in Washington, D. C., and shall constitute the entire record in this proceeding. Upon said record the Board may make findings of fact, conclusions of law and issue a decision and order. In any proceedings instituted to enforce or review such Board order the record as herein described shall constitute the entire record.

III

Respondent, a Wisconsin corporation, having its principal place of business in Racine, Wisconsin, and operating several plants in Wisconsin, Iowa, and Illinois, is engaged in the manufacture and sale of farm implements and farm machinery. Respondent's plant at Rock Island, Illinois, hereinafter called the plant, is the only plant involved in the instant proceeding and was acquired and placed in operation during 1937. During the year 1941 respondent purchased raw materials and supplies valued at approximately $1,000,000, of which amount approximately 80 per cent was delivered from points outside the State of Illinois. During the same period, respondent sold finished products manufactured at the plant in an amount in excess of $2,000,000, of which amount approximately 80 per cent was shipped to points outside the State of Illinois. There are at the present time approximately 700 persons employed at the plant, 582 of whom are in the appropriate unit hereinafter referred to in Paragraph VI. Respondent admits that its operations as herein described occurred in commerce within the meaning of Section 2 (6) and (7) of the Act.

[fol. 39]

IV

The Union, affiliated with the Congress of Industrial Organization, is a labor organization within the meaning of Section 2 (5) of the Act.

V

Respondent, by its duly authorized agents, while engaged in the operation of the plant from on or about November, 1937, and at various times thereafter, upon hiring em-

ployees or at the commencement of the factory year, offered to each and every one of its employees individually a contract, a representative copy of which is hereto attached as Exhibit "A" and made a part hereof (respondent's current rules referred to therein and made a part thereof, is attached hereto and made a part hereof as Exhibit "B"), and executed said contracts with each of approximately 75 per centum of its employees individually. From time to time thereafter at the beginning of each factory year, certain of said contracts were renewed and certain new contracts entered into. The employees executing said contracts were not necessarily the same from time to time; certain employees executed said contracts who had not executed them during the preceding factory year and other employees who had previously executed contracts failed to renew them. The percentage of contracts in effect at all times remained approximately as herein set forth. The factory year runs currently from August 1, 1941 up to and including July 31, 1942. There are presently in full force and effect 433 of such contracts between respondent and individual employees, 415 of which are with employees in the unit as described in Paragraph VI herein, which unit consists of 582 employees.

On December 17, 1941, February 5, 1942, and March 19, 1942, and on each of said dates, respondent mailed to each and all of its employees engaged at the plant a letter over the signature of T. E. Stahl, Works Manager, a copy of each of said letters being attached hereto, and made [fol. 40] a part hereof, as Exhibit "B", "C" and "D", respectively.

The Board contends, and respondent denies, that said individual contracts now in effect, and each of them, are illegal, unenforceable and void as to respondent, as set forth in Paragraph 5 and 10 of the complaint in that:

(1) Each of said individual contracts, and particularly the employee covenants provided therein, preclude the employees, and each of them, from exercising their rights under the Act. Each of said contracts is, therefore, invalid on its face and unenforceable and void as to respondent;

(2) In addition to (1) herein and regardless whether said contracts are illegal *per se*, respondent actively uti-

lized said contracts as a means of interfering with the self organization of its employees and preventing collective bargaining by publicizing to its employees:

(a) That the contracts were a bar to the selection of a bargaining representative under Section 9(c) of the Act as set forth in Exhibit "C";

(b) That the company would not bargain with their duly certified collective bargaining representative as exclusive representative, respecting wages, hours and working conditions during the term of said individual contracts as set forth in Exhibit "E".

For the purposes of this Stipulation, the Board does not contend that the execution of said contracts was a condition of employment, or that the status of individual employees was affected by reason of signing or failing to sign said contracts.

VI

The parties state that on January 26, 1942, the Board, rejecting respondent's contention therein raised that the contracts hereinabove referred to constitute a bar to a direction of election, issued its Decision and Direction of Election in Case No. R-3394, entitled *In the Matter of J. I. Case Co.* and *International Union, United Automobile Aircraft and Implement Workers of America, C. I. O.* (38 [fol. 41] N. L. R. B. 110), finding, among other things, that in order to insure to the employees of the plant the full benefit of their right to self organization and otherwise to effectuate the policies of the Act, "all production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, of J. I. Case Co., Rock Island, Illinois, plant exclusive of office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices" constitute a unit appropriate for the purposes of collective bargaining with respondent, within the meaning of Section 9 (b) of the Act, hereinafter called the unit. For the purposes of this Stipulation respondent does not contest the appropriateness of the unit.

VII

That on February 13, 1942, a majority of the employees in the unit designated the Union as its representative for the purpose of collective bargaining with respondent, such designation having been made pursuant to aforesaid Direction of Election in an election by secret ballot held on February 13, 1942, and at all times since February 13, 1942, the Union has been the exclusive representative of all employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

VIII

On March 7, 1942, Mr. H. D. Burcham, duly authorized representative of the Union, in a meeting with Mr. T. E. Stahl, Works Manager the Rock Island plant and duly authorized representative of respondent, did request respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other conditions of employment with the Union as the exclusive representative of all the employees of respondent in the unit. In [fol. 42] response thereto, Mr. Stahl did fail and refuse to negotiate with the Union as the exclusive representative of all the employees in the unit with respect to rates of pay, wages, hour- of employment or other conditions of employment, declaring that respondent could not deal with the Union in any manner affecting the rights and obligations of respondent and its employees under the individual contracts while the contracts remained in full force and effect. Mr. Stahl continued that respondent would deal with the Union on matters which did not affect the rights of respondent and the employees under the individual contracts, and that it would deal with the Union as the exclusive bargaining agency for all employees in the unit on matters relating to hours, wages and conditions of employment upon expiration of the individual contracts.

IX

At all times since March 7, 1942, up — and including the making of this Stipulation and Agreed Statement of Facts, respondent has maintained the same position, as described

in Paragraph VIII herein, with respect to the Union's request to bargain collectively.

The Board contends, and respondent denies, that respondent has refused to bargain collectively with the Union as the exclusive representative of its employees within the unit in violation of Section 8 (5) of the Act.

X

Anything to the contrary herein notwithstanding, the record in this matter may be reopened by the Board upon notice to the parties, provided, should that occur, that the record will, upon request of any of the parties hereto, be reopened with respect to any or all issues herein.

[fol. 43]

XI

There is no oral understanding or agreement which varies, alters or adds to this Stipulation and Agreed Statement of Facts.

Dated at Chicago, Illinois, this 13th day of April, 1942.

J. I. Case Company, By Clark M. Robertson, Clark M. Robertson, Counsel; S. T. Reid, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., By H. D. Burcham, International Representative, by Isaiah S. Dorfman, Regional Attorney, National Labor Relations Board, 13th Region, by William J. Isaacson, Attorney, National Labor Relations Board, 13th Region.

[fol. 44] EXHIBIT "A" TO STIPULATION OF FACTS

Form F-928-R. I. 2000 7-41

To maintain the operation of this factory and to establish mutually satisfactory employment relations, the following agreement is voluntarily entered into for the factory year August 1, 1941-July 31, 1942 between

J. I. Case Company
Rock Island Works, and
—— —— Employee

(Filed with Chief Trial Examiner, Apr. 16, 1942.)

During the term of this agreement 10¢ per hour will be paid over and above the rates shown.
The Company Agrees:

1. To pay not less than the rate of — cents per hour of work by Employee as —— and not less than — cents per hour when employed otherwise because of lack of regular employment, or the piece rates prevailing for jobs to which employee is assigned.

2. To furnish employment as steadily as business and trade conditions permit.

3. To maintain the rate of wages per hour or the piece work prices during the life of this agreement. A material change in manufacturing methods or equipment for any job or piece, as heretofore, will be treated as a new job and prices determined accordingly.

4. To maintain an emergency hospital and a panel of doctors for call.

5. To comply with the rules of the Company contained in Company's current rule book and as posted in the shop.

J. I. Case Company, Per —— ——.

The Employee Agrees:

1. To faithfully and honestly serve the Company during the operating periods from August 1, 1941 to July 31, 1942, [fol. 45] unless prevented by sickness or desiring to take a position elsewhere.

2. To accept the wages, hours and working conditions agreed to herein.

3. To preserve and care for the property of the Company.

4. To comply with the rules of the Company contained in the Company's current rule book, receipt of copy which is hereby acknowledged, and as posted in the shop.

Signed —— ——, Employee.

Date —. Check—. Address—.

—— ——.

Quality Agreement

In accepting employment with J. I. Case Company I agree to the following fixed policy:

(A) Quality must be first; piece work prices provide for good work.

(B) Defective work will not be paid for; employees using materials or parts clearly defective from some previous operation, will be held responsible for loss of their time spent on such material or parts.

(C) To cooperate to the best of my ability to uphold the Company policy of "Quality Products."

——, *Employee.*

[fol. 46] EXHIBIT B TO STIPULATION OF FACTS

(Filed with Chief Trial Examiner Apr. 16, 1942.)

Hand-Book for Factory Employees

(Cut)

J. I. Case Company, Rock Island, Illinois

- Employment Methods
- Factory Rules
- Safety Rules
- Apprentice Training
- Vacation Plan
- General Information

Form F-1211 1500 242

Greetings

To all present employees of the J. I. Case Company, to all those previously employed, whom we may be able to recall to work, and to any who may become new employees of the Company, the Management extends its greetings and best wishes. May our relationship be such that we may all profit therefrom, and be justly proud.

Such a satisfactory relationship can only result when there is present in spirit and practice a mutual understanding of the rights of the individual and of his Management, and when both cooperate to meet, so far as practicable, the needs and desires of the other.

The continued success of the business is the one most necessary thing in making possible the development of such a relationship.

The success of the business will depend entirely on the acceptance of the things we make by our potential customer. His acceptance will depend on the price he must pay for [fol. 47] our products, the service they will render in use, and our ability to supply them when he wants them.

The rules set up in the following pages are only such as your management deem necessary to a proper conduct of the business, and to make your work safer and more secure and pleasant.

Your full and complete understanding and observance of them is solicited. Your cooperation is needed. The cooperation of your management is assured.

Employment

Industry and Business are largely dependent for successful operation on the interest, ability and cooperation of the available help in the community where they are located. The prosperity and improvement of any community, in turn, depends on the success of its local industrial and business institutions and their ability to furnish regular employment at good wages.

It has been, and will continue to be a policy of the J. I. Case Company to give preference to residents of the local community, so far as possible, when hiring help.

During periods of abnormal activity or when a shortage of skilled help occurs, or when technical experience or training not available locally is needed it may be necessary to secure help outside.

A centrally located Employment Department does all the hiring for the works. This department is open to anyone wishing to apply for work during all the regular operating hours of the works.

Every applicant is given courteous attention and if he desires to do so may fill out and file a formal application for work. No applicant is ever hired at the time of his first appearance at the Employment Office or on the filing of his application. Time must be taken to check references and previous employment record.

Any applicant who can be placed will be notified at his home and called to the Employment Office.

When an applicant whose services can be used applies at the Employment Office the Employment Manager ex- [fol. 48] plains to him the job, the wages on that job and

other conditions of his employment. If these are satisfactory he is handed a copy of the "Hand-book for Factory Employees" and sent to the Company Doctor for a physical examination. He is asked to read our rules and return to the Employment Office following his examination.

Physical examinations are required so that we may avoid putting anyone at work for which he is not physically fitted or which might be detrimental to his health. To protect those already employed by preventing hazards from communicable diseases, and to provide a record of health condition at time of employment as a protection to the employee and the Company.

When the applicant returns to the Employment Department, having passed his physical examination, he is questioned by the Employment Manager to determine whether he has read "Factory Rules" and "Safety Rules" as contained in the "Hand-book for Factory Employees" and understands them. He is then definitely hired, asked to sign the following Safety Pledge Card and presents this Pledge to his foreman when reporting for work.

Safety Pledge

Mr. —— ——.

I have carefully read the Safety Rules of the J. I. Case Company.

I believe they are fair.

I will observe them at all times to the best of my ability.

I further pledge that during the period of my employment here I will cooperate with you, with the Safety Committee, and with my fellow workers to make this a safe place to work.

—— ——. Name.

Clock No. —.

Date —— —, ——.

[fol. 49] Probationary Period.

Every new employee understands that his first thirty days on the job constitutes a trial or probationary period during which his employment may be terminated at any time.

New men cannot always be placed at the kind of work for which they are best fitted within this period, but the foreman should determine within this period whether the

new employee has the necessary qualifications and willingness to work to warrant retention past the probationary period.

Factory Rules

The following rules are issued by this Company for the guidance of its employees. Experience has taught us the necessity for certain regulations in order to maintain a satisfactory working organization. Our desire is that all relations with you be based on fair treatment. With these thoughts in mind, these rules were formulated. Acceptance of employment with this Company constitutes acceptance of these rules.

1. Employees will be furnished identification badges to be worn in a conspicuous manner upon their outer clothing at all times while entering and on the Plant property. A charge of $.50 will be made for lost badges.

2. Working hours will be announced by appropriate notices on Company bulletin boards or by the foreman. These hours are governed by the business available and the conventional hours of work. Employees shall not enter the plant more than thirty minutes prior to their scheduled starting time.

3. Starting and quitting time will be designated by a signal; every employee must start and stop his work by such signal and at no other time.

4. Every employee must, in person, register his own "time in" and "time out" on the clock provided. If [fol. 50] one employee registers for another, this is considered a basis for dismissal.

5. Employees shall not visit departments in the Plant other than those in which they are employed, except upon Company business, unless authorized to do so by their Department Head.

6. In case of sickness or emergency, which prevents your reporting to work at the usual time, 'phone your foreman or the Employment Office as early as possible. Employees injured outside of the plant and requiring the service of a physician will be required to furnish a medical statement of fitness to return to duty before returning to work. Em-

ployees absent because of sickness or exposure to a contagious disease must furnish the Employment Department with a physician's statement on their fitness to resume employment before reinstatement.

7. Employees terminating their work with the Company will not be paid until three days after such termination unless they have given their foreman three days' notice.

8. All employees must have tool-crib clearance tickets before receiving final pay-off.

9. Employees terminating their work with the Company or discharged shall report at the Employment Department before receiving final pay-off.

10. The Pay Roll Department will make pay-offs each working day between 10:00 a. m. and 11:00 a. m., and 3:00 p. m. and 4:00 p. m. at the Paymaster's office.

11. Factory employees will be paid weekly on Friday for work done the previous week. In case of holidays falling on Friday, payment will be made on Thursday.

12. Smoking is not permitted except in such places and at such times as are designated by local regulations.

13. For the protection of Case employees who are gathered together for the purpose of earning their living, [fol. 51] there shall be no soliciting of memberships, pledges, subscriptions, collecting of money, circulating petitions, or conducting other than Company business, on Company property at any time (with one exception, that to be the Community Chest which is an annual community charity activity.

14. Abusive, or threatening language toward fellow employees, fighting, or threatening bodily injury to other employees is a basis for dismissal.

15. Removal by an employee of Company property from the premises is a basis for dismissal.

16. The Employment Department or your timekeeper should be notified of any change in home address.

17. Wilful disobedience of an order or an instruction given to an employee relative to his work by a Foreman or

other supervising office is not permitted, and is a basis for dismissal.

18. Working while in any degree under the influence of intoxicants is not permitted and is a basis for dismissal.

19. Except in cases of emergency, master switches or controls for machinery are to be operated only by the foreman or by individuals designated by the foreman.

20. From time to time it may be necessary to add, amend, or change the general rules or special rules as published. When such additions, amendments, or changes are made, a notice to this effect will be posted on the Company's bulletin boards.

Mutual cooperation will make your work more pleasant and profitable to you and the Company. We pledge ours and solicit yours.

Do not let personal affairs or problems interfere with a proper performance of your work.

Avoid garnishees or wage assignments. Plan to save part of your earnings; the thrift habit is a good one.

[fol. 52] Safety Rules of the J. I. Case Company

It is the purpose of this Company to make your working conditions as safe as may be possible.

To this end it has guarded or stands ready to guard or correct any hazardous condition. To provide safe equipment and to cooperate with you in making your work here safe.

We will need your cooperation. Each foreman will act as chairman of the Safety Committee for his department. Workers will serve on rotating commitees, to promote Safety and to maintain interest in Safe Operation. When you are asked for such service it is hoped that you will serve willingly and cooperate fully. It is a program for the best interest of all of us.

Safety Pays

Only necessary rules, and rules that may be enforced without injustice are part of our safety code.

For your personal protection the following general rules are mandatory. Additional rules pertaining to your individual work or department may be posted for your further protection.

Failure to observe published safety rules may be cause for dismissal.

Treatment of Injuries

All injuries, however slight, must be treated at the works hospital at once.

Proper treatment, promptly rendered, prevents complications.

We want a record of every accident. If we correct conditions causing minor accidents we will eliminate major accidents.

[fol. 53]

Machinery

Stop all machinery before cleaning, oiling, adjusting or repairing.

Use belt shifter when shifting belts.

Safety guards must be in place before any machine is operated.

Punch press operators must not put hands under dies; use hooks, tongs or tweezers.

When changing dies on presses turn off power and use safety lock.

Do not operate emery wheels that do not run true or on which rest is not properly adjusted.

Tools and Equipment

Do not use mushroomed chisels, punches, hammers or other hand tools.

Do not use loose or worn wrenches that slip under pressure.

Do not use unsafe ladders, or ladders with dull or rounded safety spikes.

Handling Material

Falling objects cause many accidents.

Do not leave tools, material or parts on overhead beams or ledges.

Do not pile or stand material on floor or bench in such manner that it may fall or be knocked over.

Do not load trucks in such manner that material may fall off during loading, transporting or unloading.

Electrical Repairs

Report all trouble on electrical equipment to your foreman. Only members of the electricians crew shall make electrical repairs.

Safety Clothing

Safety clothing or devices must be used where required by rules.

Goggles must be worn by grinders, welders, metal pourers, chippers, furnace operators, concrete breakers, and generally, where there are flying particles from work. [fol. 54] Your foreman will provide the right type for your work.

Respirators must be worn where dust, smoke or paint spray conditions exist.

Safety shoes should be worn by all men handling material —they must be worn on jobs indicated by your foreman or safety committee.

The Congress type of Safety Shoes are required in the Foundry. Lace shoes or low shoes are not to be worn in the Foundry. In other departments where falling hazards exist safety shoes are to be worn. At no time should badly worn or thin soled shoes be used.

Loose clothing must not be worn when working around revolving shafting or machinery.

Mental Attitude

Keep your mind on your work.

Think before you act.

Check your worries and outside interests and plans at the gate.

Do not engage in horseplay, scuffling, running in aisles or entry ways.

Be safe yourself, help make the plants safe for your fellow workers.

Cooperate fully in the Safety Program and the Work of your Safety Committee.

Keep Your Safety Pledge

Apprentice Training

Self preservation and continuity as an industrial nation require that apprentice training be encouraged. Specialization will produce satisfactory production men, but will not produce the all around mechanics and foundry-men needed in our shops. We should, therefore, assume our share of the responsibility of industry and maintain an apprenticeship system that will turn out a certain number of finished mechanics each year.

In keeping with the above statement of policy which is [fol. 55] incorporated in the Case Labor Policy, apprentice training is regularly provided for tool-makers, pattern-makers, machinists and moulders.

Careful selection is made before applicants are accepted for apprentice training; all apprentices must have completed high-school with satisfactory grades and have received training in the type of work for which he seeks apprenticeship. Apprentices indentured are signed to apprentice contracts complying with the laws of the state and the rules of the state; definite agreement in the contract provides for liberal compensation, periodically increased, and for issuing of a diploma and payment of a bonus for completion of their course. During the course of training careful and individual attention in the shop guarantees complete and satisfactory coverage of work necessary to a proper training and time spent in Vocational School in the study of related subjects rounds out a complete training.

Vacation Plan

This Plan was adopted to provide annual vacations in recognition of faithful, efficient and continuous service and regular attendance at work. We suggest that the time granted be devoted to rest, recreation and healthful enjoyment which tend to improve the health, interest and efficiency of those participating.

A complete explanation of the Plan is published and is available to all employees.

Compensation for Factory Accidents

The J. I. Case Company operates as a self-insured risk under the State Law and the supervision of the Industrial Commission.

Every effort is made not only to comply with the Law and the rules of the Commission but to provide for the most prompt and best medical care for all injuries happening in the plant.

A hospital with trained nurse and a part time physician is provided at the plant. Every injured employee is offered [fol. 56] the opportunity of selecting a physician from a panel of representative doctors in the city.

Compensation for lost time and disability due to factory accidents is paid promptly and in full accord with the rules of the Commission.

Good Will

The Management of the J. I. Case Company sincerely hopes that all of its employees find pleasure in their work and success and happiness in life.

Our continued success as a company is largely dependent on having our people find these things here. Only intelligent, interested workers can produce the kind of product we must have if the Company is to maintain and improve its position in the industry. Only those who find pleasure in their work and success and happiness in life can have this interest in the things they are doing.

The Management of this Company pledges its best efforts to make this such a place to work that you may find these things while working here.

J. I. Case Company.

Racine, Wisconsin.

EXHIBIT C TO STIPULATION OF FACTS

(Filed with Chief Trial Examiner, Apr. 16, 1942)

J. I. Case Company

A Full Line of Farm Machinery

General Office, Racine, Wis.

Rock Island Works — Rock Island, Illinois
200 Seventh St.

December 17, 1941.

To all Employees of Rock Island Works J. I. Case Company,

You will remember that in the Fall of 1940, the Farm Equipment Workers Organizing Committee, C. I. O., started [fol. 57] proceedings before the National Labor Relations Board seeking to establish themselves as the representative of employees of the Rock Island Plant for the purpose of collective bargaining. As a result of that petition an election was ordered at the Rock Island Plant and the election was held on November 28, 1940 and resulted in the employees of the J. I. Case Company by their free choice and ballot, rejecting the Union as their bargaining representative.

There has now been filed with the National Labor Relations Board a new petition by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., whereby that organization seeks to be designated by the National Labor Relations Board as the only bargaining representative for all production and maintenance employees of the Rock Island Plant excluding Office, Clerical and Supervisory employees and also excluding Pattern Makers and Pattern Makers Apprentices and Watchmen.

In accordance with the Labor Board procedure, a hearing on this petition was held before the National Labor Relations Board in the Post Office Building at Rock Island on Wednesday, December 17, 1941. Both the Company and the Union were represented at the hearing.

The Labor Board filed a statement by the Regional Director of the Labor Board stating that he had been furnished with 225 membership cards in the Union purportedly

signed by employees of the Rock Island Plant. These cards were dated in the following months:

March, 1941	34 Cards
April, 1941	45 Cards
May, 1941	38 Cards
June, 1941	2 Cards
July, 1941	5 Cards
August, 1941	24 Cards
September, 1941	6 Cards
Undated	71 Cards

Of the foregoing total of 225 cards, he stated 219 appeared to be genuine membership cards. The certificate further [fol. 58] stated that these cards had been checked against the Company's payroll of November 22, 1941 and that 181 of the names on the cards were found on the Company's payroll which consisted of approximately 623 hourly paid employees. In other words, the cards evidenced a membership on November 22, 1941 of 181 out of 623 employees on the payroll.

The Company asked that the petition be denied in view of the fact that the union did not represent a majority or even a substantial number of the Case employees involved and furthermore showed to the Board that on the payroll of November 22, 1941, 433 of the employees had exercised their right to make individual contracts with the Company.

The classification of employees as to the bargaining unit in the event an election is ordered by the Board was not questioned although there were some individual employees whom the Union sought to exclude whom the Company thought should be included and the men afforded the right to vote in the event an election should be ordered. Evidence was presented on this point and will be submitted to the Labor Board at Washington for a final determination as will also the Company's request that the proceeding be dismissed on the ground that the Company does not believe that any action should affect its rights and the rights of its employees who have signed individual contracts and indicated that they wish to bargain with the Company on that basis.

The Company does not know how the Labor Board will decide these questions but if it decides that there is a ques-

tion of representation, all production and maintenance employees, excluding Office, Clerical and Supervisory employees and also excluding Pattern Makers and Pattern Makers Apprentices and Watchmen will be entitled to vote by secret ballot as to whether they desire to be represented by the Union for the purpose of bargaining or whether they do not wish to be so represented.

The Company is giving you this information in accordance with its policy of keeping you informed as to matters which affect the employment relationship existing between you and the Company.

Yours truly, J. I. Case Company, Rock Island Works,
/s/ L. E. Stahl, *Works Manager.*

Factories—Racine, Wis.—Rockford, Ill.—Rock Island, Ill.
Burlington, Ia.

[fol. 58a] EXHIBIT D TO STIPULATION OF FACTS

(Letterhead of J. I. Case Company, Rock Island, Illinois)

February 5, 1942.

To all Employees of the Rock Island Works of J. I. Case Company:

On December 17 we wrote you about the hearing held in the Post Office Building before the National Labor Relations Board. As we told you, this hearing was held on the application of the CIO International Union United Automobile Aireraft and Agricultural Implement Workers of America, which is seeking to obtain the right to represent all Case production employees except pattern makers. We also told you in that letter that we would write you further in the event the Labor Board decided that there was a question of representation and ordered an election by secret ballot as to whether you desire to be represented by the Union in matters affecting your employment relationship with the Company.

Under date of January 26, 1942, the Labor Board made an order in which it held that the question of bargaining [fol. 58b] representation would have to be determined by the employees themselves in an election by secret ballot

conducted by the Labor Board. The Labor Board has not ruled that the CIO represents a majority of Case employees, but has said that this question must be settled by a secret ballot by the employees themselves.

On Wednesday, February 4, 1942, a meeting was held in Chicago at the request of the Labor Board for the purpose of arranging the details in connection with the election. Both the Union and the Company were represented at this meeting. In accordance with arrangements discussed at this meeting, the election will be held on Friday, February 13, between the hours of 1:00 P. M. and 5:00 P. M.

You will remember that at the time of the election in 1940 the Company offered to hold the election on Company time so that the earnings of the employees would not be affected. This was not satisfactory to the Union involved in that election. The Company representatives made this same offer yesterday and it was accepted. Accordingly, arrangements will be made to vote by departments, and employees will vote on Company time without loss of pay. Piece workers will receive average piece work earnings for the day for the time lost in voting. You will also remember that the last election was held at the fire station on Eighth Street. This election will be held on the Company's property and the voting will take place in the lunch room in the central building back of the first aid room.

It was also agreed that there can be no electioneering or campaigning in the plant, and on the day of the election within 100 yards of the plant. This is to assure you that no one can interfere with you or attempt to influence your free right to exercise your own choice in voting.

An official notice of the election stating these arrangements and the other rules, together with the form of ballot, will be issued by the National Labor Relations Board, and will be posted on the bulletin boards in the plant so that everyone may be informed. There will also be posted on the bulletin boards schedules regarding voting time by the various departments.

In accordance with the Labor Board's order, the following employees will be entitled to vote: All production and [fol. 58c] maintenance employees whose names are on the Company's payroll of January 24, 1942, including any employees who did not work during said payroll period because they were ill or on vacations, in active military service

or training in the United States, and employees who were then and have since been temporarily laid off, excluding all office and clerical employees and other supervisory employees and pattern makers, pattern makers' apprentices, and employees who have since quit or been discharged for cause.

At the time of the hearing held in December, the Union requested that certain individual employees be disqualified and refused permission to vote on the ground that they were supervisory employees. This matter was presented to the Labor Board, and the Labor Board has ruled that Paul Eastland, Russell Johnson and Loyd Cousin will not be permitted to vote. It has also ruled that Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank DeFreeze, and Hank DeVooght, whom the Union also sought to exclude, are entitled to vote.

There will be a full and free opportunity for every qualified employee to vote in this election and to decide for himself whether he wishes to be represented by the CIO in matters respecting his employment relation with the Company, or whether he wishes to continue the present relationship existing between the Company and its employees. Every employee owes to himself, to his fellow employees and to the Company an obligation to carefully consider the issues that are involved in this election and to go to the polls and express his free choice.

Yours truly, J. I. Case Company, Rock Island Works,
T. E. Stahl, *Works Manager.*

[fol. 59] EXHIBIT E TO STIPULATION OF FACTS

100 Years' Service to Agriculture

J. I. Case Company

A Full Line of Farm Machinery

(Filed with Chief Trial Examiner, Apr. 16, 1942)

Rock Island Works, Rock Island, Illinois, 200 Seventh St.

March 19, 1942.

To All Employees of Rock Island Works of J. I. Case Company:

We wish to tell you about what has occurred subsequent to our letter of February 3 in connection with employment relations:

As you know, on February 13 a ballot was taken under the direction of the National Labor Relations Board. In this ballot, 352 of the employees voting indicated their wish to the represented by the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O. for the purpose of collective bargaining; 190 of the employees voting indicated that they did not wish to be represented by the Union. Inasmuch as a majority of the employees voted in favor of the Union, the National Labor Relations Board on March 3, 1942 issued its certification as follows:

[fol. 60] "It Is Hereby Certified that International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, has been selected by a majority of all the production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank DeFreeze, and Hank Devooght, of J. I. Case Co., Rock Island, Illinois, plant exclusive of office and clerical employees and Paul Eastland, Russell Johnson, Lloyd Cousins, and other supervisory employees, and pattern makers and pattern-makers' apprentices, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, International Union, United

Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

As we told you in our letter of December 17, 433 Case employees have exercised their right to make individual contracts with the Company. These contracts continue until August 1, 1942, and their validity is not affected by the result of the ballot. Accordingly, when the Committee of the Union came to see the Management of the Rock Island Plant, and presented a collective bargaining contract for all employees, they were advised that the Company could not deal with the Union in any manner which affected the rights and obligations of the Company and its employees under the individual contracts while these contracts were still in effect.

The Company has advised the Union that it would deal with the representatives of the employees on matters which do not affect the rights of the employees under the individual contracts, and that it will deal with the Union as the exclusive bargaining agency for all employees in the unit on matters relating to hours, wages and conditions of employment when the present contracts expire.

The Union has advised the Company that it will not deal with the Company except on the basis of the contract [fol. 61] which it presented. In other words, the Union has taken the position that the Company must tear up its contracts with its individual employees and disregard the rights and obligations of its employees and of itself under those agreements. The Company believes and has been advised that the contracts for their term constitute legal and binding obligations both on the part of the Company and on the part of the employees, and that its individual employees have constitutional rights which they are entitled to have preserved and which the Company has no right to surrender.

Charges have been filed by the Union against the Company with the National Labor Relations Board predicated on its refusal, and statements have been made that unless it conforms to the wishes of the Union and disregards the contractual rights and obligations of itself and of its employees, a strike may be called.

The Company especially regrets this situation, but it cannot legally disregard its obligations to its employees who in good faith have entered into contracts with it.

Yours truly, J. I. Case Company, Rock Island Works,
(S.) T. E. Stahl, Works Manager.

T. E. Stahl:VL

1842 Case Centennial Jubilee 1942

General Office—Racine, Wisconsin

Factories—Racine, Wis.—Rockford, Ill.—Rock Island, Ill.
Burlington, Ia.

[fol. 62] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8149

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

J. I. CASE COMPANY, Respondent

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed November 2, 1942

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, J. I. Case Company, Rock Island, Illinois, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of J. I. Case Company and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., Case No. C-2180."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Wisconsin corporation, engaged in business in the State of Illinois, within this judicial circuit,

where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, the record in a proceeding before the Board known as Case No. R-3394 (XIII-R-1047), a complaint and notice of hearing, respondent's answer to complaint, [fol. 63] amended complaint, respondent's amended answer to amended complaint, stipulation of April 13, 1942, and order transferring case to the Board, the Board on July 7, 1942, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondent, its officers, agents, successors, and assigns. The aforesaid order provides as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, J. I. Case Company, Rock Island, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to the individual contracts of employment or any modification, continuation, extension, or renewal thereof, or entering into any similar form of contract with its employees for any period subsequent to the date of this Decision;

(b) Refusing to bargain collectively with International Union, United Automobile, Aricraft & Agricultural Implement Workers of America, C. I. O., as exclusive representative of all production and maintenance employees at its Rock Island, Illinois, plant, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' appren-

tices, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(c) In any manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

[fol. 64] 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Give separate written notice to each of its employees who signed an individual contract of employment or any modification, continuation, extension, or renewal thereof, or any similar form of contract for any period subsequent to the date of this Decision, that such contract will not in any manner be enforced or attempted to be enforced, that the employee is not required or expected by virtue of such contract to deal with the respondent individually, and that such discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under such contract;

(b) Upon request, bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., as the exclusive representative of all its production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank De Freeze, and Hank De Vooght, and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(c) Post immediately in conspicuous places throughout its Rock Island, Illinois, plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) hereof, and

(2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) hereof;

(d) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On July 7, 1942, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. [fols. 64a-66] Clark M. Robertson and Ben T. Reidy, respondent's attorneys in Milwaukee, Wisconsin and Rock Island, Illinois, respectively.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony, and evidence, stipulation, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, stipulation, and the proceedings set forth in the transcript and upon the order make thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, its officers, agents, successors, and assigns to comply therewith.

National Labor Relations Board, By /s/ Ernest A. Gross, by /s/ Ernest A. Gross, Associate General Counsel.

Dated at Washington, D. C., this 29th day of October, 1942.

Duly sworn to by Ernest A. Gross. Jurat omitted in printing.

[fol. 67] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT—October Term, 1942, January Session, 1943

No. 8149

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

J. I. CAS COMPANY, Respondent

On Petition for the Enforcement of an Order of the National Labor Relations Board

OPINION—February 26, 1943

Before EVANS, KERNER, *Circuit Judges*, and LINDLEY, *District Judge*.

LINDLEY, *District Judge*. Petitioner seeks to have enforced its order entered in mid-summer, 1942, directing respondent to cease and desist from certain acts declared violative of the National Labor Relations Act and to give notice of such action.

Beginning with 1937, respondent tendered to each of its employees at its Rock Island manufacturing plant a contract fixing wages and terms of employment for a year ending July 31, to be renewed from year to year, that in effect at the time of the hearing expiring July 31, 1942. Execution of this agreement was entirely voluntary, and in no way a condition precedent to initial employment or to continuation of employment. Approximately 75 per cent of the employees signed.

On January 26, 1942, an election having been held to determine the collective bargaining agent of the employees, [fol. 68] at which 352 votes were cast for International Union United Automobile, Aircraft & Agricultural Implement Workers of America, C.I.O., herein termed the Union, and 190 against, the Board certified the Union as the exclusive bargaining representative. On March 7, the Union requested the plant manager to bargain collectively with it, with respect to wages, hours and other conditions of employment, as the exclusive representative of all employees. Respondent refused, declaring that respondent could not negotiate with the Union in any matter affecting the rights and obligations of respondent and its employees "under

the individual contracts while the contracts remain in full force and effect." It expressed willingness to bargain on all matters which did not affect the rights of the respective parties under the contracts and to deal with the Union as exclusive bargaining agency upon all matters upon their expiration and, by letter, notified its employees of its decision, saying in part: "In other words, the Union has taken the position that the company must tear up its contracts with its individual employees and disregard the rights and obligations of its employees and of itself under those agreements. The Company believes and has been advised that the contracts for their term constitute legal and binding obligation both on the part of the Company and on the part of the employees, and that its individual employees have constitutional rights which they are entitled to have preserved and which the Company has no right to surrender."

The Board interpreted this action as refusal upon respondent's part to bargain collectively and further held that, by writing the letter referred to, the employer had interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act. It insists here that, though respondent may enter into voluntary contracts with its individual employees, the existence of such agreements does not relieve it of its statutory duty to bargain collectively with the designated agent as the exclusive representative of the employees and that the power and right of the employer and employees to enter into individual contracts must be subordinated to and so effectuated as not to interfere with full achievement of the purpose of the Act, i. e., collective bargaining with the selected agency as the exclusive representative of all employees, and that to assert, as respondent did, that it [fol. 69] would not bargain collectively, except subject to and in accord with existing contracts, was *per se* a failure to bargain collectively.

Respondent, on the other hand, contends that, inasmuch as the contracts had been entered into between its employees and itself in good faith and were still in effect, to require collective bargaining as to the subject matter thereof was to interfere with freedom of contract; that the Act does not contemplate or require such interference with respondent's constitutional right to contract freely with its employees

and that the Board in its findings and conclusions exceeded its constitutional and statutory power.

Thus our rather narrow question is whether existing individual agreements with employees must yield to and be subordinated to the duty of the employer to bargain collectively with the Union as the exclusive agency, designated by law.

More specifically respondent insists that, under the language of *N. L. R. B.* v. *Jones and Laughlin*, 301 U. S. 1, 45, the duty of the employer to bargain collectively with the designated agency does not preclude "such individual contracts as the company may elect to make directly with individual employees" and asserts further authority for its position in the language of this court in *N. L. R. B.* v. *Bear Brand Hosiery Co.*, 131 F. (2d) 731 (C. C. A. 7). However, we believe that other decisions of the Supreme Court remove any uncertainty as to the full scope of the statutory duty of the employer to bargain collectively with the selected agency and as to the relationship of individual contracts with such duty, and establish the rule that inasmuch as the Act was expressly intended to promote and enacted under the constitutional congressional right to protect commerce, any existing contractual right interfering with effectuation of the legislative intent must yield to the duty imposed upon both employer and employees. Thus in *National Licorice Co.* v. *N. L. R. B.*, 309 U. S. 350 at 364, the court said: "The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices. • • • Obviously employers cannot set at naught the National Labor Relations Act by inducing their workmen to agree not to demand performance of the duties which it imposes or by insisting, more than in a private litigation that the em-[fol. 70] ployer's obedience to the Act cannot be compelled in the absence of the workers who have thus renounced their rights."

It follows, we think, that the duty to bargain collectively is necessarily paramount to the freedom of contract enjoyed prior to enactment of the statute or before a collective agent has been chosen. When once the majority of the employees have exercised their right to choose a representative for bargaining, the employer's obligation to deal exclusively with such representative as to all terms and conditions of

employment becomes unconditional irrespective of any individual bargain previously made. This is in accord with the rule announced in other decisions establishing the constitutionality of similar legislation. Contracts must be understood as having been made not only with reference to existing legislation but also with reference to the possible exercise of any rightful authority of the Government, and no obligation of existing contracts may be invoked to defeat that authority. *Knox* v. *Lee*, 12 Wall. 457-549-551; *Norman* v. *B. & O. R. Co.*, 294 U. S. 240, 305-311; *U. S. Machinery Co.* v. *U. S.*, 258 U. S. 451, 456; *Paramount Famous Corp.* v. *U. S.*, 282 U. S. 30; *Interstate Circ. Inc.* v. *U. S.*, 306 U. S. 208. "Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interest of the community is due process. • • • that the power to restrict freedom of contract may be exercised in the public interest with respect to contracts between employer and employee is undeniable. • • • the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the Power to interfere." *West Coast Hotel* v. *Parrish*, 300 U. S. 379, 391, 392, 394.

Whether we look upon the power of the Congress to enact such legislation as the exercise of a police power growing out of the commerce clause, such as is the source of power of the State in regulation of its citizens' activities, *Public Utilities Com.* v. *Quincy*, 290 Ill. 360; *Schiller Piano Co.* v. *Ill. Utilities Co.*, 288 Ill. 580; *Integrity Mut. Ins. Co.* v. *Boys*, 293 Ill. 307; *Ward* v. *Farwell*, 97 Ill. 593, or whether we characterize it by other appropriate terms, all citizens, in their relationship one to the other, must so act and so contract as not to interfere with or infringe upon full execution of the constitutional power. Inasmuch as the Congress [fol. 71] has been authorized by the constitution to enact the National Labor Relation Act, it follows that subsisting agreements, negativing, abridging or infringing upon full effectuation of the legislative purpose must fall. We can not believe it was the purpose of the Supreme Court in the Jones & Laughlin case to limit this doctrine in any wise. To attribute such an intent to the court is to infer necessarily that it intended to overrule the reasoning of many authorities to the contrary. *Holden* v. *Hardy*, 169 U. S. 366;

Knoxville Iron v. *Harbison*, 183 U. S. 13; *Patterson* v. *Bark Eudora*, 190 U. S. 169; *McLean* v. *Arkansas*, 211 U. S. 539; *Chicago, B. & Q. R. Co.* v. *McGuire*, 219 U. S. 549, 567; *Bunting* v. *Oregon*, 243 U. S. 426; *N. Y. Central R. Co.* v. *White*, 243 U. S. 188. It follows that inasmuch as respondent's action denied full force and effect to the provisions of the National Labor Relations Act, the Board rightfully directed it to cease and desist.

In view of our conclusion, respondent's communications to its employees were improper. Inasmuch as it could not rightfully refuse to bargain because, as it said, it was barred by various individual contracts, and inasmuch as the premise was unsound, it was improper to submit it to its employees as a circumstance influencing their action in selecting or recognizing a bargaining agent. The erroneous conclusion contained in the quoted language of its letter was such as to advise the employees that respondent considered that it had been wrongfully directed to bargain collectively without regard to the existing contracts. In taking this position, as we have seen, it was mistaken, and to bring to bear, as an influential factor upon its employees, the use of the erroneous conclusion, was an invasion of that neutrality required of employers in dealing with their employees prescribed by the act.

However, one provision of the order, we think is unjustified. The only complaint made against respondent or justified by the evidence was that it had erred in concluding that it had the right to insist upon the individual contracts in face of the statutory requirements to bargain with the exclusive bargaining agent selected. It erred as to its legal duty and in advising its clients of this erroneous position; beyond that there was no complaint. The individual contracts out of the way, respondent exhibited a perfect willingness to bargain collectively with the designated agent. Consequently the Board had jurisdiction only to order re- [fols. 72-79] spondent to cease and desist from the conduct complained of. The additional paragraph directing respondent to cease and desist from "in any manner" interfering with its employees in the exercise of their rights of self-organization and of bargaining collectively was a gratuitous, extraneous exercise of authority by the Board unjustified by the facts. *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426; *N. L. R. B.* v. *Stone, et al.*, 125 F. (2d)

752 (C. C. A. 7); *Aluminum Ore Co.* v. *N. L R B.*, 131 F (2d) 485 (C. C. A. 7).

The order is modified by eliminating therefrom paragraph 1 (c) and as modified,

Enforced.

[fol. 80] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1942, JANUARY SESSION, 1943

No. 8149

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

J. I. CASE COMPANY, Respondent

On Petition for the Enforcement of an Order of the National Labor Relations Board

DECREE—Filed March 17, 1943

The National Labor Relations Board having issued an order against J. I. Case Company on July 7, 1942, and having petitioned this Court for enforcement of said order, and this Court having considered said petition and issued its decision on February 26, 1943, enforcing said order as modified, it is hereby

Ordered, Adjudged and Decreed that J. I. Case Company, Rock Island, Illinois, and its officers, and agents, shall:

1. Cease and desist from:

(a) Giving effect to the individual contracts of employment or any modification, continuation, extension, or renewal thereof, of entering into any similar form of contract with its employees for any period subsequent to the date of this Decree;

[fol. 81] (b) Refusing to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., as exclusive representative of all production and maintenance employees at its Rock Island, Illinois, plant, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank DeFreeze, and Hank DeVooght, and excluding office and clerical employees and Paul East-

land, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(c) In any manner interfering with the efforts of International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., to bargain collectively with it as the exclusive representative of all production and maintenance employees at its Rock Island, Illinois, plant, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank DeFreeze, and Hank DeVooght, and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Give separate written notice to each of its employees who signed an individual contract of employment or any modification, continuation, extension, or renewal thereof, or any similar form of contract for any period subsequent to the date of this Decree, that such contract will not in any manner be enforced or attempted to be enforced, that the employee is not required or expected by virtue of such contract to deal with respondent individually, and that such discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under such contract;

[fols. 82-87] (b) Upon request, bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., as the exclusive representative of all its production and maintenance employees, including Charles R. (Whitey) Clausen, Johnny Waters, Oliver Gordon, Walter Coghill, Frank DeFreeze, and Hank DeVooght and excluding office and clerical employees and Paul Eastland, Russel Johnson, Loyd Cousin, and other supervisory employees, and pattern makers and pattern makers' apprentices, in respect to

rates of pay, wages, hours of employment, and other terms and conditions of employment;

(c) Post immediately in conspicuous places throughout its Rock Island, Illinois, plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices stating: (1) that respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) hereof, and (2) that respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) hereof;

(d) Notify the Regional Director for the Thirteenth Region in writing within ten (10) days from the date of this Decree what steps respondent has taken to comply herewith.

Dated this 13th day of March 1943.

Evan A. Evans, Judge, United States Circuit Court of Appeals for the Seventh Circuit. Otto Kerner, Judge, United States Circuit Court of Appeals for the Seventh Circuit. Walter C. Lindley, Judge, United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 88] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 89] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, A. D. 1942

No. —

J. I. CASE COMPANY, Petitioner,

—

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition for a Writ of Certiorari to the Circuit Court of Appeals for the Seventh Circuit

STIPULATION REGARDING PRINTED RECORD

It is hereby stipulated and agreed by and between J. I. Case Company, Petitioner, and National Labor Relations Board, Respondent, by their respective attorneys, that the following portions of the Record shall be printed and constitute the record on the petition for writ of certiorari:

1. Proceedings in the Circuit Court of Appeals:
(a) Petition of National Labor Relations Board for enforcement of Board's Order.
(b) Opinion of the Court.
(c) Decree entered by Court.
2. First amended charge filed with the National Labor Relations Board by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., dated March 27, 1942.
[fol. 90] 3. Amended complaint issued by National Labor Relations Board and filed April 16, 1942.
4. Amended answer of J. I. Case Company to the complaint filed April 16, 1942.
5. Stipulation and agreed statement of facts before the National Labor Relations Board dated April 13, 1942, together with the exhibits thereto attached.
6. Decision and Order of the National Labor Relations Board in Case No. C-2180.

John C. Gall, Clark M. Robertson, Attorneys for J. I. Case Company, Petitioner. Charles Fahy, Solicitor General of the U. S. for National Labor Relations Board, Respondent.

Dated April 28, 1943.

[fol. 91] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 21, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. Counsel are requested to discuss in their briefs and on oral argument the question whether the case is moot.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration or decision of this application.